



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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CC:TE/GE:EOEG:ET2
COR-117406-00

[REDACTED]

Dear [REDACTED]:

This responds to your letter dated September 6, 2000 requesting a private letter ruling on whether the [REDACTED] is required to pay taxes under the Federal Insurance Contributions Act (FICA) for part-time, seasonal, and temporary employees who participate in the State's Deferred Compensation Plan.

Unfortunately, we are not able to issue a ruling on this issue due to the fact that your submission does not comport with the requirements for requesting a private letter ruling. Revenue Procedure 2000-1, 2000-1 I.R.B. 4, sets forth procedures for requesting letter rulings. We have included a copy of Revenue Procedure 2000-1 for your information. If you wish to request formal guidance, such as a private letter ruling, you should follow the procedures set forth in Revenue Procedure 2000-1. In the absence of a request for formal guidance, we are only able to provide general information. Accordingly, in response to your request, we offer the following general information, which we hope will be helpful to you.

Section 3121(b)(7)(F) of the Internal Revenue Code ("the Code") generally expands the definition of employment for FICA purposes to include service performed after July 1, 1991 as an employee for a state or local government entity unless the employee is a member of a retirement system of such entity.

Section 31.3121(b)(7)-2(b) of the Employment Tax Regulations provides that the rules under section 31.3121(b)(7)-2 generally treat an employee as a member of a retirement system if the employee (1) is a "qualified participant" in a system that provides retirement benefits, and (2) has an accrued benefit or receives an allocation under the system that is comparable to the benefits the employee would have received under Social Security. In the case of part-time, seasonal and temporary employees, this minimum retirement benefit must be nonforfeitable.

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Section 31.3121(b)(7)-2(d)(1) of the regulations defines a “qualified participant”. Whether an employee is a qualified participant in a defined benefit, defined contribution or other individual retirement system is determined as services are performed.

Section 31.3121(b)(7)-2(d)(1)(i) of the regulations provides in general that an employee is a qualified participant in a defined benefit retirement system with respect to services performed on a given day if, on that day, the employee is or ever has been an actual participant in the retirement system and, on that day, the employee has a total accrued benefit under the retirement system that meets the minimum retirement benefit of section 31.3121(b)(7)-2(e)(2).

Section 31.3121(b)(7)-2(d)(1)(ii) of the regulations provides in general that an employee is a qualified participant in a defined contribution or other individual account retirement system with respect to services performed on a given day if, on that day, the employee has satisfied all conditions (other than vesting) for receiving an allocation to the employee’s account (exclusive of earnings) that meets the minimum retirement benefit requirement of section 31.3121(b)(7)-2(e)(2).

Additional rules apply for determining whether a part-time, seasonal or temporary employees are qualified participants. Section 31.3121(b)(7)-2(d)(2) of the regulations provides that a part-time, seasonal or temporary employee is not a qualified participant on a given day unless any benefit relied upon to meet the requirements of section 31.3121(b)(7)-2(d)(1) is 100 percent nonforfeitable on that day. Rules similar to the rules in section 411(a)(11) of the Code are applicable in determining whether a benefit is nonforfeitable.

Section 31.3121(b)(7)-2(d)(2)(ii) of the regulations provides that a part-time, seasonal or temporary employee’s benefit is considered nonforfeitable within the meaning of section 31.3121(b)(7)-2(d)(2)(i) on any given day if, on that day, the employee is unconditionally entitled under the retirement system to a single sum distribution on account of death or separation from service of an amount that is at least equal to 7.5 percent of the participant’s compensation for all periods of credited service taken into account in determining whether the employee’s benefit under the retirement system meets the minimum retirement benefit requirement. Interest meeting the requirements of section 31.3121(b)(7)-2(e)(2)(iii)(C) must be paid on the distribution amount through the date of the distribution.

Section 31.3121(b)(7)-2(e)(1) of the regulations provides that the system must provide retirement-type benefits. For purposes of section 3121(b)(7)(F) of the Code, a retirement system includes any pension, annuity, retirement or similar fund or system within the meaning of section 218 of the Social Security Act that is maintained by the state or local government to provide retirement benefits to its employees who are participants. Thus, the legal form of the system is generally not relevant. For example, a retirement system may include a plan described in section 401(a), an annuity plan or

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contract under section 403 or a plan described in section 457(b) or (f). Accordingly, a plan need not be qualified under section 401(a) in order to be a retirement system for purposes of section 3121(b)(7)(F).

Section 31.3121(b)(7)-2(e)(2) of the regulations specifies that the system must provide a minimum level of benefits. The general rule is that the system must provide a benefit that is comparable to the benefit provided under the Old Age Survivors and Disability Insurance (OASDI) portion of Social Security. Whether this requirement is met is generally determined on an individual basis.

A defined contribution retirement system meets the minimum benefit requirement if allocations to the employee's account (not including earnings) are at least 7.5% of the employee's compensation. Employer matching contributions may be taken into account for this purpose. The plan must use a definition of compensation that is generally no less inclusive than the definition of the employee's base pay as designated by the employer or the retirement system.

Section 31.3121(b)(7)-2(e)(2)(C) of the regulations specifies the following:

REASONABLE INTEREST RATE REQUIREMENT. A defined contribution retirement system will not meet the minimum benefit requirement unless the employee's account is credited with earnings at a rate that is reasonable under all the facts and circumstances, or employees' accounts are held in a separate trust that is subject to general fiduciary standards and are credited with actual earnings of the trust fund. Whether the interest rate with which an employee's account is credited is reasonable is determined after reducing the rate to adjust for the payment of any administrative expenses.

Section 414(i) of the Code defines a defined contribution plan for purposes of Subtitle A, Ch. 1D, Part 1B as a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses and any forfeitures of accounts of other participants which may be allocated to such participant's account.

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This letter provides general information only. It describes well-established interpretations or principles of tax law without applying them to a specific set of facts. It is advisory only and has no binding effect with the Internal Revenue Service. This letter is intended only to provide you with general guidance for determining how to comply with applicable law.

The attorney assigned to this matter is Lynne Camillo (Employee ID# 50-01066). She can be reached at (202) 622-6040.

Sincerely,

JERRY E. HOLMES
Chief, Employment Tax Branch 2
Office of the Assistant Chief Counsel
(Exempt Organizations/Employment Tax/
Government Entities)

Enclosure:
As stated